Supreme Court, U.S.
FILED

No. (1)

001067 DEC 27 2000

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In The Supreme Court of the United States

BILLY PATIN,

Petitioner,

v.

LARRY MUNSTER, E. J. FAYARD, and C. L. WEBB,

Respondents.

On Petition for a *Writ* of *Certiorari* to the Supreme Court of the State of Louisiana

PETITION FOR *WRIT* OF *CERTIORARI*

J. Minos Simon
J. MINOS SIMON, LTD.
1408 West Pinhook Road
Post Office Box 52116
Lafayette, Louisiana 70505-2116
(337) 233-4625

Counsel of Record for Petitioner

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

52 pp

QUESTIONS PRESENTED FOR REVIEW

I. SHOULD THE PETITION HAVE BEEN VULNERABLE TO A PEREMPTORY EXCEPTION OF NO CAUSE OF ACTION?

II. WAS PETITIONER PROVIDED NO SUBSTANTIAL RECOURSE DESPITE HAVING BEEN DEPRIVED OF HIS MEANS OF LIVELIHOOD, CONTRARY TO CONTROLLING AUTHORITY ANNOUNCED BY THIS COURT?

III. DID THE COURTS BELOW IMPROPERLY TREAT THIS CASE AS IF IT INVOLVED EXCLUSIVELY AN ISSUE OF PROCEDURAL DUE PROCESS WHEN, IN FACT, IT INVOLVED A DENIAL OF SUBSTANTIVE DUE PROCESS?

LIST OF PARTIES TO PROCEEDINGS BELOW

Pursuant to Sup. Ct. R. 14(b), the Petitioner submits the following list of parties to the proceedings before the Supreme Court of the State of Louisiana:

The Petitioner is Billy Patin, who was Plaintiff-Petitioner in the Supreme Court of the State of Louisiana.

The Respondents are Larry Munster, E.J. Fayard, and C.L. Webb, who were the Defendants-Respondents below.

There are no parent companies or nonwholly owned subsidiaries involved in this case.

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OPINIONS BELOW

The Judgment of the 15th Judicial District Court for the Parish of Lafayette, State of Louisiana, dated August 17, 1999, granting the Motion of the Respondents to dismiss Petitioner's Original Petition is set forth in the Appendix beginning at A-1.

The Written Reasons clarifying the earlier Oral Order of the 15th Judicial District Court for the Parish of Lafayette, State of Louisiana, dated July 16, 1999, is set forth in the Appendix beginning at A-4.

The Opinion and Order of the Court of Appeal for the Third Circuit, State of Louisiana, affirming the Order of the District Court, dated April 5, 2000, is reported at *Patin v. Munster*, 760 So. 2d 447 (La. Ct. App. 3d Cir. 2000), and is set out in the Appendix beginning at A-7.

The Order of the Court of Appeal denying the Petition for Rehearing is set out in the Appendix beginning at A-16.

The Order of the Supreme Court of the State of Louisiana, dated September 29, 2000, is set out in the Appendix beginning at A-18.

STATEMENT OF JURISDICTION

The final judgment of the Supreme Court of the State of Louisiana affirming the order of the Court of Appeal was entered on September 29, 2000.

This Court has jurisdiction to review the orders and judgment of the Supreme Court of Louisiana under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of the section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

La. Rev. Stat. Ann. § 4:154 provides:

> § 154. Administrative procedure; appeal to the commission and review of commission rulings
>
> A. Except as otherwise provided by this Section, the commission's hearings,

practice and procedure, and rule making procedure are as provided in the Administrative Procedure Act; however, in cases made the subject of judicial review, the court may not extend or continue beyond ten (10) days from date of issuance any stay order or temporary restraining order issued by it, except:

(1) Upon agreement of counsel for all parties, or

(2) Absent such agreement, by order of the court, but only after a contradictory hearing held no later than the tenth (10th) day following the issuance of such stay order or temporary restraining order and then only upon a showing by a party that a denial of such extension or continuation would be prejudicial to that party's opportunity to cause the court to affirm, modify, or reverse the decision appealed from or to be reviewed.

B. A final appeal, in the case of any person penalized, or disciplined by the stewards, may be taken to the commission.

C. Such an appeal must be filed in writing at the office of the commission within five days of the date of said penalty or imposition of said discipline.

D. Such an appeal must be signed by the person making it and must set forth his reason therefor.

E. An appeal from the decision of the stewards to the commission shall not affect such decision until the appeal has been acted upon by the commission.

F. The commission must grant a hearing within ten days of the receipt of this appeal, and must render a decision within forty-eight hours following the conclusion of the appeal hearing. Any continuance of a hearing must be reasonable in duration and for just cause.

STATEMENT OF THE CASE

Proceedings Below

On June 1, 1999, Petitioner instituted an action in the Fifteenth Judicial District Court, Parish of Lafayette, State of Louisiana, against Respondents, asserting that while acting under color of state law these Respondents deprived Petitioner of his right of constitutional due process in violation of 42 U.S.C. § 1983. The court entered a temporary restraining order as of May 29, 1999. The temporary restraining order was renewed on June 7, June 17, June 28, and July 7, 1999. On July 7, 1999, Respondents filed an exception of no cause of action, which is the Louisiana procedural equivalent of a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Fed R. Civ. P. 12(b)(6), and

exceptions on other grounds not relevant here. By its order entered on August 17, 1999, confirming the oral order entered on July 14, 1999, the district court granted Respondents' exception of no cause of action on the ground that Petitioner had failed to exhaust his available administrative remedies. On July 16, 1999, the district court entered Written Reasons for its oral order, again on the ground that Respondent had failed to exhaust his administrative remedies, a precondition, the court reasoned, for invoking relief under 42 U.S.C. § 1983.

Petitioners appealed the decision of the district court to the Court of Appeal for the Third Circuit, State of Louisiana, which affirmed the judgment of the district court. The Court of Appeal concluded that Petitioner had alleged a denial of his procedural right to due process, as opposed to his right to substantive due process. Accordingly, his failure to exhaust his administrative remedies precluded a recovery under 42 U.S.C. § 1983. The Supreme Court of the State of Louisiana, without rendering a written opinion, denied Petitioner's application to that court for a writ of certiorari. This application for Writ of Certiorari followed.

STATEMENT OF THE FACTS

Petitioner is a horse racing jockey, licensed in Arkansas and Louisiana. Respondents are horse racing stewards appointed by the Louisiana State Racing Commission. Around noon on May 27, 1999, Petitioner's attorney in Lafayette, Louisiana, received a facsimile transmission indicating that there would be a hearing that

afternoon at 5:30 at Evangeline Downs near Lafayette to determine Petitioner's continuing eligibility to remain a licensed jockey in Louisiana. Petitioner's attorney appeared at the hearing to contest the conducting of the hearing because Petitioner had not been provided with notice in accordance with La. Rev. Stat. Ann. § 49:955. Respondents conducted the hearing over counsel's objection at about 5:30 p.m. on that date and revoked Petitioner's license. No testimony was taken at the hearing, nor were any documents received in evidence. Instead, Petitioner alleged in ¶ 9 of his petition to the trial court that he "[was] informed, believes, and therefore avers that the only basis for the Stewards' withdrawal of Billy Patin's jockey license was [Respondents'] reliance on an alleged faxsimile [sic] transmission of a purported rule made by the Arkansas Racing Commission, which faxsimile was not certified, whereby said commission purportedly suspended Billy Patin's license to function as a jockey in the State of Arkansas only." This action followed.

ARGUMENT

I. THE PETITION SHOULD NOT HAVE BEEN VULNERABLE TO A PEREMPTORY EXCEPTION OF NO CAUSE OF ACTION.

Procedurally, this case was dismissed after the trial court granted the Respondents' peremptory exception of no cause of action, La. Code Civ. Proc. art. 927(A)(4), which is similar to Fed. R. Civ. P. 12(b)(6). The Louisiana Code of Civil Procedure provides, in pertinent part, as follows:

> Art. 927. Objections raised by peremptory exception
>
> A. The objections which may be raised through the peremptory exception include but are not limited to the following:
>
> . . . .
>
> (4) No cause of action[.]

La. Code Civ. Proc. art. 927(A)(4).

Because the exception of no cause of action presents only a question of law, the district court's ruling dismissing a plaintiff's petition is subject to *de novo* review. *Craft v. Allstate Insurance Co.*, 663 So. 2d 116 (La. Ct. App. 3d Cir. 1995). A petition for relief should not be dismissed for failure to state a cause of action unless it appears beyond doubt that the plaintiff can prove no set of facts entitling him to any relief. *Everything on Wheels v. Subaru South*, 616 So. 2d 1234 (La. 1993). The exception is triable solely on the face of the petition and any documents or exhibits annexed to the petition, and no evidence may be admitted in support of the exception. *Young v. Central Louisiana Legal Services*, 432 So. 2d 1072 (La. Ct. App. 3d Cir. 1983). In viewing the petition, the court must accept all the facts contained in the petition as true, *Everything on Wheels v. Subaru South*, and these facts must be viewed in a light most favorable to the plaintiff with all doubts resolved in favor of the plaintiff. *Ventura v. Cox Cable Jefferson Parish*, 583 So. 2d 1237 (La. Ct. App. 5th Cir. 1991). Where it can reasonably do so, the court must maintain the petition against the exception so as to afford plaintiff the opportunity to present his evidence.

Sevarg Co. v. Energy Drilling Co., 591 So. 2d 1278 (La. Ct. App. 3d Cir. 1991).

The Court is familiar with the standard to be applied in cases involving dispositions pursuant to Fed. R. Civ. P. 12(b)(6). *Village of Willowbrook v. Olech*, 120 S. Ct. 1073 (2000). As will become apparent presently, the Louisiana courts improvidently dismissed Petitioner's Original Petition for failure to state a cause of action.

II. PETITIONER WAS PROVIDED NO SUBSTANTIAL RECOURSE DESPITE HAVING BEEN DEPRIVED OF HIS MEANS OF LIVELIHOOD, CONTRARY TO CONTROLLING AUTHORITY ANNOUNCED BY THIS COURT.

The Notice of Hearing with which Petitioner was provided scarcely five hours before the hearing to determine whether his racing license should be revoked (and attached as an exhibit to Petitioner's petition for relief) provided as follows:

> This is to notice you that an administrative hearing will be held regarding Jockey Billy Patin's eligibility in Accordance with LRC 4:150 and LRS 4:152.
>
> The hearing will be held on May 27, 1999, at 5:30PM in the steward's office at Evangeline Downs. This notice is to advise you of your right to have an attorney present at this hearing.

> You are hereby commanded to bring with you any and all documents, letters, pictures, or other proof that relates in any way to this matter.
>
> You are also notified that it is your responsibility to transport and arrange the appearance of any and all witnesses that may be required at this hearing.

It is worthy of note that no basis for the action is stated, nor is there any indication of the nature of the evidence against Petitioner. Instead, the notice does no more than advise the recipient that the hearing will be held scarcely more than five hours hence to determine Petitioner's ability to continue earning his living as a horse racing jockey. If the issue before the Court were solely the sufficiency of the notice to enable Petitioner to prepare his response and refute the charges (whatever they may have been) being laid against him, one can only surmise that this Petition would be speedily granted, the judgment below reversed, and the case remanded with instructions forthwith to conduct a trial.

The Louisiana Court of Appeal has recognized as much in another, similar case. In *Benoit v. Louisiana State Racing Commission*, 576 So. 2d 578 (La. Ct. App. 4th Cir. 1991), a trainer was accused of violating a rule governing horse racing in Louisiana by unlawfully selling an electrical device. After examination by the racing stewards, the matter was referred by them to the racing commission for a hearing. The notice provided to the respondent trainer was held by the trial court to have been defective because it cited an incorrect

provision of the rules as stating the basis for the adjudicatory action. The Louisiana Court of Appeal agreed.

> The trial judge considered the notice deficient and concluded that without proper notice of the violation of LAC 35:1801 B (7), the Commission had violated Benoit's right to due process by conducting the hearing relevant to and suspending him pursuant to that rule. We cannot say that this conclusion by the trial judge was clearly wrong.

Id. at 580. If a notice that incorrectly identifies the basis for the alleged violation is so deficient as to violate the subject's right to due process, then clearly a notice that effectively is no notice at all, as in this case, even more clearly violates due process.

The Supreme Court of Louisiana rendered no opinion in connection with its order, so it can only be surmised that it found no reason to quarrel with the reasons given for affirming the trial court that were stated in the opinion of the Louisiana Court of Appeal. *Patin v. Munster*, 760 So. 2d 447 (La. Ct. App. 3d Cir. 2000). It is to that opinion that Petitioner respectfully directs the Court's attention. The court summarized Petitioner's position below as follows:

> In his brief Patin has alleged that the stewards have deprived him of his constitutional right of due process in two ways. First, he claims that the stewards violated his right of due process by scheduling a hearing on the revocation of his racing

> license with only five hours notice and without specifying the charges against him or the basis for their revocation of his license. Second, he claims that the stewards' sole reliance on a judgment of the Arkansas State Racing Commission violated his right to due process because that judgment had not been made executory in Louisiana.
>
> The trial court found that Patin had raised procedural due process claims, which could be satisfied by the adequate administrative remedies provided in La.R.S. 4:141 et seq. The trial court concluded that the failure to exhaust these remedies precluded Patin from stating a cause of action pursuant to 42 U.S.C. § 1983 and from establishing irreparable injury as grounds for a temporary restraining order and preliminary injunction.

Id. at 449.

It is well established under the doctrine announced in *Patsy v. Board of Regents of Florida*, 457 U.S. 496, 516 (1982), that "exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to [42 U.S.C.] § 1983." The Court of Appeal concluded, however, that the doctrine announced in *Patsy* is limited to deprivations of substantive, as opposed to procedural, due process. The Court of Appeal concluded that the deprivation alleged by Petitioner was in the nature of procedural due process, rather than substantive due process.

Because Petitioner (and others presumably similarly situated) had a right of recourse and appeal under state law, *see Caracci v. Louisiana State Racing Commission*, 556 So. 2d 1249 (La. 1990), the right to pursue recourse in court under 42 U.S.C. § 1983 had not yet matured. In the words of the Court of Appeal, "[Petitioner] does not yet have an actionable procedural due process claim." *Patin v. Munster*, 760 So. 2d at 451.

In reaching its conclusion, the Court of Appeal analyzed and attempted to reconcile *Zinermon v. Burch*, 494 U.S. 113 (1990), with *Parratt v. Taylor*, 451 U.S. 527 (1981), and *Hudson v. Palmer*, 468 U.S. 517 (1984). The court's analysis provides the heart of its rationale and the key to where that analysis went wrong.

> Prior to *Zinermon*, the *Parratt-Hudson* doctrine applied to deprivations of property, whether intentional or negligent, and provided that random, unauthorized deprivations did not violate procedural due process if adequate post-deprivation remedies existed under state law. While the *Zinermon* court expanded the *Parratt-Hudson* doctrine to include deprivations of liberty interests, it limited that doctrine somewhat by refusing to apply it when the state vests in one state actor both the power to deprive the plaintiff of his liberty interest and the power to provide pre-deprivation process. *This limitation is not relevant in the present case because it was the*

> *racing commission, as neutral decision-maker, who possessed the ultimate power to revoke Patin's jockey license, not the stewards.*

Patin v. Munster, 760 So. 2d at 450 (emphasis added).

Characterizing the racing commission as "neutral" presupposes the outcome of a trial on the merits of this case. It may be that the stewards were acting entirely on their own in depriving Petitioner of any substantial right to be heard at the hearing. It is equally plausible that the stewards, Respondents herein, were acting pursuant to authority granted by and at the behest of the racing commission. Whether the constitutional deprivation is narrowly characterized as a denial of due process or a denial of equal protection, the result is substantially the same. In the end, Petitioner is deprived of his livelihood without first having been given an opportunity to present evidence and arguments to rebut the allegations against him, an opportunity that the Supreme Court of Louisiana contemplated would be afforded to anyone adversely affected by a determination by the racing stewards.

This Court has universally condemned this kind of arbitrary conduct, in whatever guise it is couched. A citizen has every right to expect that he will be given a meaningful opportunity to be heard before privileges to which he is entitled may be revoked or withheld as a result of state action.

> Our cases have recognized successful equal protection claims brought by a "class of one," where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no

> rational basis for the difference in treatment. *See Sioux City Bridge Co. v. Dakota County*, 260 U. S. 441 (1923); *Allegheny Pittsburgh Coal Co. v. Commission of Webster Cty.*, 488 U. S. 336 (1989). In so doing, we have explained that "'[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.'" *Sioux City Bridge Co.*, *supra*, at 445 (quoting *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U. S. 350, 352 (1918)).

Village of Willowbrook v. Olech, 120 S. Ct. at 1074-75.

The substance of this Court's decisions in cases like *Olech* is to protect individuals from arbitrary invasions of their right to engage in their occupation without affording the individual adversely affected by state action comprehensive due process protection. Due process protection is to be construed and applied broadly, not narrowly. In Louisiana, a citizen is confronted with different interpretations of the *Parratt-Hudson* doctrine, invoked by the Court of Appeal in this case, leading to different outcomes depending on whether one finds oneself in state or federal court, even though the claim arises under the same facts. This, of course, is one of the circumstances where this Court will grant relief in the nature of a petition for writ of certiorari.

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> . . . .
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals[.]

Sup. Ct. R. 10(b).

The Fifth Circuit perceives and applies the *Parratt-Hudson* doctrine very differently than do the Louisiana Court of Appeal and the Louisiana Supreme Court. Here is how the Fifth Circuit explicated the controlling authority of this Court as it applies to cases like this one:

> In recent years federal courts have tried to map the boundaries of the *Parratt/Hudson* doctrine. . . . In *Zinermon v. Burch* the Court held unconstitutional the actions of state officials under a Florida law allowing voluntary admissions into state mental hospitals. The Court found that the Florida law delegated to state officials too much authority in deciding when to deny a patient the additional safeguards of an involuntary

commitment. *Zinermon* refused to apply *Parratt/Hudson* because the case lacked three predeprivation conditions necessary to that doctrine. In a case where those conditions do exist, however, "a statutory provision for a postdeprivation hearing, or a common-law tort remedy for erroneous deprivation, satisfies due process." The conditions are, first, that the deprivation be unpredictable; second, that predeprivation process be impossible, making any additional safeguard useless; and, third, that the conduct of the state actor be unauthorized. In such a case "the State cannot be required constitutionally to do the impossible by providing predeprivation process."

Zinermon treated *Parratt* and *Hudson* as two unusual cases in which the governmental interests prevailed under *Mathews*. The *Zinermon* majority may have intended to weaken *Parratt/Hudson*. To the extent the doctrine needed resuscitation, we are bound to notice its resuscitation in this Circuit by this Court's en banc decision in *Caine v. Hardy* [905 F.2d 858 (5th Cir. 1990)]. *Caine* reads *Zinermon* to effect only a "wrinkle" on the *Parratt/Hudson* doctrine.

In *Caine*, this Court held that *Parratt/Hudson* prevents the procedural due

> process claim of a doctor deprived of his staff privileges at a public hospital because the three predeprivation conditions highlighted by *Zinermon* were each present. *Caine* reads those conditions narrowly enough to make this case, although it involves a different sort of deprivation in an entirely different context, legally indistinguishable. The *Parratt/Hudson* doctrine applies to Dr. Charbonnet's case. For the deprivation of his property he must now look to state law for relief.

Charbonnet v. Lee, 951 F.2d 638, 642 (5th Cir.) (footnotes omitted), *cert. denied*, 505 U.S. 1205 (1992).

It is evident, as the Court of Appeal apparently recognized, that the three factors identified by the Fifth Circuit in *Charbonnet* and elsewhere are not present here. The actions of the Respondent stewards were entirely predictable, since the Court of Appeal concluded that they were doing precisely what they were engaged by the State of Louisiana to do—namely, to investigate and remedy, as appropriate, alleged violations of the rules of horse racing by licensed persons. Their conduct was authorized by the State through its racing commission. While the commissioners play a role in the revocation or denial of a jockey's license, it is on the basis of the hearing conducted by the stewards that the commissioners rely. Review by the commissioners is not *de novo* but, instead, is on the basis of the record developed by the stewards.

To put the matter differently, since the commissioners, who have final authority over Petitioner's license, rely on the factual findings of the stewards, then it is fundamental that Petitioner receive a full and fair hearing on proper notice in the first instance. He is not entitled to another hearing, only to a review of the findings of the stewards entered as a result of the hearing. It can hardly be said that he has been afforded due process when he has been given no meaningful opportunity to refute the evidence adduced against him at the hearing.

What is there for the commissioners to review, and how can that administrative review be meaningful? All the factual findings upon which Respondents relied were wholly unrebutted since Petitioner was given no opportunity to prepare and thus to effectively to rebut them. That a public licensee is entitled to a predeprivation hearing is axiomatic, and that is the procedure contemplated by the governing law in Louisiana. Postdeprivation administrative review presupposes that the hearing produces findings that are susceptible of review. Here, that never occurred. Instead, the review by the racing commissioners would be wholly without substance, since there is no record upon which a valid decision can have been made.

To paraphrase the Fifth Circuit, unlike *Caine v. Hardy*, 905 F.2d 858 (5th Cir. 1990), the *Parratt/Hudson* doctrine does not prevent the procedural due process claim of a jockey deprived of his racing license from being adjudicated in court without prior administrative review because the three predeprivation conditions highlighted by *Zinermon* were not

each present. Applying the rationale of the Fifth Circuit, Petitioner's case should have gone forward to trial. Yet the Louisiana Court of Appeal has chosen to ignore the authority of the Fifth Circuit, which has far more experience with § 1983 claims than do the state appellate courts. Instead, the Court of Appeal has applied a far broader rule which would deny relief to almost every plaintiff with a substantial due process claim. It reaches that result regardless of whether the plaintiff deprived of a substantial property right has been afforded a meaningful opportunity to be heard. The practical result of the Louisiana Court of Appeal's decision in this case is that Petitioner is without a forum to seek review and relief.

The Court of Appeal relied on *Caracci v. Louisiana State Racing Commission* for the proposition that a jockey aggrieved by the adverse decision of the stewards has an appropriate means and forum for review. The Supreme Court of the State of Louisiana, however, obviously contemplated that the hearing afforded the aggrieved person should have been, at a minimum, meaningful. In other words, the aggrieved person shall have been given an opportunity at least to present evidence both on the merits of the accusation leveled against him and by way of mitigation of whatever sanction might be awarded. *See* La. Rev. Stat. Ann. § 49:955(b). Here, Petitioner had no such opportunity. Accordingly, the right of administrative review that the Court of Appeal presumed was available to Petitioner in fact was no review at all.

The application of the *Parratt-Hudson* doctrine by the Court of Appeal of the State of Louisiana in this case cannot

be squared or reconciled with the application of that doctrine in a federal court governed by the decisions of the United States Court of Appeals for the Fifth Circuit in *Charbonnet v. Lee* and cases following that authority. A citizen confronted with the same conduct by state officials, if seeking to have his deprivation of due process vindicated in a state court, would be subjected to a different standard of liability than would another citizen similarly situated who seeks vindication in a federal court. The state and federal courts would be applying the same law, but in a way that will have different results.

This case, in other words, presents a unique juxtaposition of both equal protection and due process principles. Petitioner has been deprived of a substantial property right without having been afforded due process. As the Louisiana Court of Appeal recognized, Petitioner's claim is governed, in the first instance, by federal constitutional principles. The Court of Appeal purported to apply the same authority announced by this Court that has been applied in analogous situations by the United States Court of Appeals for the Fifth Circuit, yet the result in this case is not consistent with that federal authority. It is respectfully submitted that this Court is obliged to reconcile that conflict by directing the Court of Appeal and the Supreme Court of the State of Louisiana to apply federal principles consistently with the law announced by this Court and as applied by the Fifth Circuit. The lack of uniformity in the application of the law is, in and of itself, a denial of due process and equal protection.

III. THE COURTS BELOW IMPROPERLY TREATED THIS CASE IS IF IT INVOLVED EXCLUSIVELY AN ISSUE OF PROCEDURAL DUE PROCESS WHEN, IN FACT, IT INVOLVED A DENIAL OF SUBSTANTIVE DUE PROCESS.

Petitioner urged, both before the Court of Appeal and the Supreme Court of the State of Louisiana, that he has been denied both procedural and substantive due process. In its opinion, the Court of Appeal ignored and disregarded Petitioner's claim of a denial of substantive due process, treating the case instead as if only a denial of procedural due process were involved.

The Court of Appeal relied for its decision, in pertinent part, on *Zinermon v. Burch*, which stands for the proposition that postdeprivation state remedies must be exhausted as a precondition to maintaining a § 1983 action, but only where there was no predeprivation hearing granted to the plaintiff. In this case, Petitioner was given a predeprivation hearing (of a sort) by Respondents, who, having received and considered only an uncertified presumptive administrative order from another state, revoked Petitioner's jockey's license. That they did so by giving effect to an adjudication rendered in another state without giving it domestic effect under Louisiana law provides the basis for Petitioner's substantive due process deprivation.

If this case had arisen in virtually any other context, the uncertified order of a tribunal in another state (Arkansas in this case) would have been given no effect unless that

adjudication had been domesticated in Louisiana pursuant to La. Code Civ. Proc. Ann. art. 2541. The purpose of that procedure, some variant of which is applied in all jurisdictions, is to create a presumption of regularity that attaches to such documents when domesticated under local law. In this case, however, the uncertified administrative decree from Arkansas was given conclusive effect, even though no presumption of regularity could attach to it. As a matter even of evidence, it is no more than the rankest hearsay, unrelieved by any exception to the general rule of the nonadmissability of hearsay.

This is precisely the kind of substantive due process violation condemned by *Zinermon*, yet upon which the Court of Appeal based its decision to deny relief to Petitioner. Any fair reading of *Zinermon* would lead to a result precisely opposite to that reached by the Court of Appeal.

> This general rule [that overlapping state remedies are generally irrelevant to the question of the existence of a cause of action under § 1983] applies in a straightforward way to two of the three kinds of § 1983 claims that may be brought against the State under the Due Process Clause of the Fourteenth Amendment. First, the Clause incorporates many of the specific protections defined in the Bill of Rights. A plaintiff may bring suit under § 1983 for state officials' violation of his rights to, e.g., freedom of speech or freedom from unreasonable searches and seizures.

> Second, the Due Process Clause contains a substantive component that bars certain arbitrary, wrongful government actions "regardless of the fairness of the procedures used to implement them." *Daniels v. Williams*, 474 U.S., at 331. As to these two types of claims, *the constitutional violation actionable under § 1983 is complete when the wrongful action is taken*. *Id.*, at 338 (STEVENS, J., Concurring in judgments). A plaintiff, under *Monroe v. Pape* [365 U.S. 167 (1961)], may invoke § 1983 regardless of any state-tort remedy that might be available to compensate him for the deprivation of these rights.

Zinermon v. Burch, 494 U.S. at 125 (emphasis added).

The Court, thus far, has declined to define what state-created rights are entitled to the dignity of substantive due process protection. *See DeBlasio v. Zoning Board of Adjustment*, 53 F.3d 592, 600 n.9 (3d Cir.), *cert. denied*, 516 U.S. 937 (1995); *Contreras v. City of Chicago*, 119 F.3d 1286, 1295 (7th Cir. 1997). Here, the Court can articulate when, if at all, a person can be denied a license by the state to practice his occupation without first having had an adequate hearing upon due and sufficient notice. The hearing should be held consistently with state law, which, as in this case, requires that the evidentiary standards set forth by state law are applied. Petitioner has been denied the right to practice his occupation, clearly a property interest cognizable within the scope of Fourteenth Amendment due process. At a

minimum, Petitioner is entitled to a trial to develop the facts necessary to establish that he has been denied a substantial property interest without having been afforded due process.

Accordingly, this is a case where the application for a writ of certiorari is both authorized by the Court's rules and should be providently granted. Substantial issues involving the equal application of the law as announced by this Court are involved. This is not a case in which a decision would have a narrow application. Instead, it presents substantial issues of constitutional law that are of general interest and applicability.

CONCLUSION

WHEREFORE, the Petitioner respectfully requests that a Writ of Certiorari issue to the Supreme Court of the State of Louisiana in this case and that, after full briefing and argument, this Court reverse the judgment of the Court of Appeal of Louisiana and direct that the case be remanded to the Circuit Court for the Parish of Lafayette for trial.

Respectfully submitted,

J. MINOS SIMON
J. MINOS SIMON, LTD.
1408 West Pinhook Road
Post Office Box 52116
Lafayette, LA 70505-2116
(337) 233-4625

Counsel Of Record
For Petitioners

No. _____

In The Supreme Court of the United States

BILLY PATIN,

Petitioner,

v.

LARRY MUNSTER, E. J. FAYARD, and C. L. WEBB,

Respondents.

On Petition for a *Writ* of *Certiorari* to the Supreme Court of the State of Louisiana

APPENDIX

J. Minos Simon
J. MINOS SIMON, LTD.
1408 West Pinhook Road
Post Office Box 52116
Lafayette, LA 70505-2116

Counsel of Record for Petitioner

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

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BILLY PATIN	**15TH JUDICIAL DISTRICT COURT**
VERSUS	**DOCKET NO. 99-2581-C**
LARRY MUNSTER, PARISH OF LAFAYETTE E.J. FAYARD and C.L. WEBB	**STATE OF LOUISIANA**

JUDGMENT

Defendant's Motion to Dissolve Temporary Order, Plaintiff's Application for Preliminary Injunction, and Defendant's Motion for protective Order came for hearing on July 14, 1999.

Present Were: Billy Patin and his attorneys, J. Minos Simon and Bradley Duane Watts
And
John Kolwe, attorney for E.J. Fayard and C.L. Webb, and by stipulation of Kim Raines Chatelain, representing the interest of Larry Munster

After considering the various briefs filed into the record by the parties and the oral argument of counsel on July 14, 1999, and for reasons orally assigned following the hearing, the court finds the Plaintiff, Billy Patin, has failed to exhaust administrative remedies before the Louisiana State Racing Commission as provided in La. R.S. 4:154., and therefore Billy Patin has failed to state a cause of action

against the defendants herein. The court further finds that the Temporary Restraining Order issued by the court on July 8, 1999 was improperly issued and therefore should be dissolved. Accordingly, it is:

ORDERED, ADJUDGED AND DECREED that Billy Patin's Original Petition for Injunction and Damages should be dismissed for failure to state a cause of action.

IT FURTHER ORDERED, ADJUDGED AND DECREED that the Temporary Restraining Order issued by the court on July 8, 1999 be dissolved.

IT FURTHER ORDERED, ADJUDGED AND DECREED the Billy Patin be cast with all costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff be cast with a portion of Defendants' attorneys' fees in the amount of $500.00 for each defense attorney as damages for the wrongful issuance of the Temporary Restraining Order, in accordance with Article 3608 of Louisiana Code of Civil Procedure.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants' Motion for Protective Order is denied.

JUDGMENT RENDERED this 3rd day of ~~July~~ August, 1999.

Abbeville, Louisiana

s/_____

DISTRICT JUDGE

STATE OF LOUISIANA PARISH OF LAFAYETTE

I hereby certify that a certified copy of this judgment has been mailed, ~~served~~ on all parties this 18 day of Aug, 1999

s/_____

Dy. Clerk of Court

cc: s/_____

FILED THIS 17

DAY OF Aug 1999

s/_____

DY. CLERK OF COURT

A TRUE COPY ATTEST

Lafayette, La. 8-18-99

s/_____

DY. CLERK OF COURT

BILLY PATIN

15TH JUDICIAL DISTRICT COURT

VERSUS

DOCKET NUMBER: 99-2581

LARRY MUNSTER,
LAFAYETTE PARISH,
ET AL

LOUISIANA

****

WRITTEN REASONS

The following is a clarification of the Court's ruling in this matter on June 14, 1999. The Court ordered that the temporary restraining order be dissolved, denied plaintiff's **(MR. PATIN'S)** request for preliminary injunction and denied defendants' motions to quash the deposition subpoena. In addition, the Court dismissed that plaintiff's suit for failure to state a cause of action.

La. R.S. 4:154 sets forth the administrative procedure that a jockey must follow subsequent to his license being revoked. However, instead of following this procedure and appealing the stewards' decision to the Louisiana State Racing Commission, **MR. PATIN** filed suit in the Fifteenth Judicial Court alleging that the actions by the stewards constituted a violation of his due process rights under 42 U.S.C. § 1983. **MR. PATIN** bases his § 1983 claim on the fact that he was only notified of the stewards' adjudication five and one-half hours notice prior to its commencement and the fact that he was subsequently denied his license therefore depriving him of his rights to property and liberty. Plaintiff argues that since he asserted a due process violation under 42 U.S.C. § 1983 he is not required to exhaust available state administrative

remedies before bringing this action in state court, Citing *Patsy v. Florida Board of Regents*, 457 U.S. 496 (1982).

While plaintiff is correct in his interpretation of *Patsy*, before reaching the step of circumventing administrative procedures he must first state a valid claim under 1983. Recovery under 42 U.S.C. § 1983 requires a plaintiff to allege and prove two essential elements: (1) that the defendant's conduct occurred under color state of state law, and (2) that the defendant's conduct deprived plaintiff of a right, privilege or immunity secured by the Constitution or a law of the United States, *Moresi v. State Department of wildlife and Fisheries*, 567 So.2d 1081, 1084 (La.1990).

It is this second prong which the court finds the plaintiff failed to satisfy. Although plaintiff has a property interest in his license under state law sufficient to invoke due process protections, and although the magnitude of his interest in avoiding suspension is substantial, the State also has an important interest in assuring the integrity of racing carried on under its auspices. This interest is sufficient justification for the stewards' authority to impose penalties without full blown due process being afforded at that stage of the proceedings, where the stewards' action was subject to immediate review and decision by the Louisiana State Racing Commission with attendant due process protections. See *Barry c. Barchi*, 443 U.S. 55 (1979); *Caracci v. Louisiana State Racing Com'n*, 556 So.2d 1249 (La. 1990).

Therefore, although **MR. PATIN** has asserted the deprivation of certain property rights, he has failed to allege violations sufficient to invoke the protections of the due

process clause and § 1983. Essentially, the plaintiff raised procedural due process claims which are satisfied by the adequate administrative remedies provided in La. R.S. 4:140 *et seq*. The Court finds that the plaintiff failure to exhaust these remedies precludes him from stating a cause of action under § 1983 and from establishing irreparable injury as grounds for a temporary restraining order and preliminary injunction.

Abbeville, Louisiana, this 16th day of July, 1999.

s/_____

DISTRICT JUDGE

Judgment rendered APRIL 5, 2000

Applications for rehearing may be filed within the delays allowed by La. Code Civ. P. art. 2166 or La. Code Crim. P. art. 922.

BILLY PATIN	*	NO. 99-1739
VERSUS	*	COURT OF APPEAL
LARRY MUNSTER E.J. FAYARD AND C.L. WEBB	*	THIRD CIRCUIT
	*	STATE OF LOUISIANA

****

APPEAL FROM THE
FIFTEENTH JUDICIAL DISTRICT COURT
PARISH OF LAFAYETTE [NO. 99-2581]
HONORABLE BYRON HEBERT

****

HENRY L. YELVERTON
JUDGE

****

(Court composed of Henry L. Yelverton, Billie Colombaro Woodard and Glenn B. Gremillion, Judges)

J. MINOS SIMON, LTD.
J. MINOS SIMON
408 West Pinhook Road
Post Office Box 52116
Lafayette, Louisiana 70505-2116
Telephone: (337) 233-4625
Attorney for Plaintiff/Appellant

KIM RAINES CHATELAIN
ASSISTANT ATTORNEY GENERAL
4224 Canal Street
New Orleans, Louisiana 70119
Telephone: (504) 599-0733
Attorney for Defendant/Appellee, Louisiana State Racing Commission

JOHN W. KOLWE
ATTORNEY AT LAW
Post Office Drawer 3408
Lafayette, Louisiana 70502-3408
Telephone: (318) 261-1200
Attorney for Defendants/Appellees, Larry Munster, E.J. Fayard, and C.L. Webb

APR 7 2000

AFFIRMED.

YELVERTON, J.

Billy Patin is a horse racing jockey. The defendants, E.J. Fayard, C.L. Webb, and Larry Munster, are horse racing stewards appointed by the Louisiana State Racing Commission. The defendants revoked Patin's racing license. Patin filed a petition for injunctive relief and damages against the stewards. They filed exceptions of no cause of action. The exceptions were granted by the trial court. Patin appeals this judgment claiming that he has stated a cause of action under state law and federal law, specifically 42 U.S.C. § 1983. We affirm.

FACTS

According to Patin's petition, his attorney received a fax on May 27, 1999, around noon which declared that there

would be an administrative hearing regarding his eligibility as a jockey at 5:30 p.m. that same day in the steward's office. Patin's attorney appeared at the hearing to contest the hearing because notice had not been provided in accordance with La.R.S. 49:955 of the Administrative Procedure Act. At the hearing the stewards revoked Patin's jockey license.

On June 1, 1999, Patin filed the present petition for injunctive relief and damages. Patin was granted a temporary restraining order as of May 29, 1999. The temporary restraining order was renewed on June 7, June 17, June 28, and July 7, 1999. The stewards filed motions to dissolve the temporary restraining order and a motion for a protective order and to quash deposition subpoenas. A hearing was held on July 14, 1999, on these motions, including Patin's motion for a preliminary injunction. The stewards had also filed exceptions of no cause of action, no right of action, improper cumulation, lack of subject matter and/or personal jurisdiction, and improper venue. These exceptions were set for hearing on August 23, 1999, but they were taken under consideration by the trial court at the hearing on July 14, 1999.

After a hearing, the trial court ordered that the temporary restraining order be dissolved, denied Patin's request for a preliminary injunction, and denied the stewards' motions to quash deposition subpoenas. The trial court also dismissed Patin's suit for failure to state a cause of action. This appeal by Patin is from the trial court judgment finding that he did not state a cause of action.

DISCUSSION

In his brief Patin has alleged that the stewards have deprived him of his constitutional right of due process in two ways. First, he claims that the stewards violated his right of due process by scheduling a hearing on the revocation of his racing license with only five hours notice and without specifying the charges against him or the basis for their revocation of his license. Second, he claims that the steward's sole reliance on a judgment of the Arkansas State Racing Commission violated his right to due process because that judgment had not been made executory in Louisiana.

The trial court found that Patin had raised procedural due process claims, which could be satisfied by the adequate administrative remedies provided in La.R.S. 4:141 *et seq*. The trial court concluded that the failure to exhaust these remedies precluded Patin from stating a cause of action pursuant to 42 U.S.C. § 1983 and from establishing irreparable injury as grounds for a temporary restraining order and preliminary injunction.

Citing Patsy v. Board of Regents of State of Fla., 457 U.S. 496, 102 S.Ct. 2557 (1982), Patin argues that he is not required to exhaust the state administrative remedies before commencing an action under Section 1983. We agree that *Patsy*, 457 U.S. at 516, 102 S.Ct. at 2568, held that "exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983." However, our analysis does not end there.

In *Zinermon v. Burch*, 494 U.S. 113, 110 S.Ct. 975 (1990), the United States Supreme Court set forth the

complete procedural due process analysis when a state actor deprives a person of a liberty interest. The *Zinermon* plaintiff had been confined to a mental hospital, as a voluntary mental patient, but lacked competency to give informed consent. The court distinguished between substantive and procedural due process violations. Violations of substantive constitutional rights are complete and actionable at the moment the wrongful deprivation occurs, and the existence of state post-deprivation remedies are irrelevant to the litigant's ultimate success. But violations of procedural due process rights are *not* complete when the deprivation occurs; they are not complete "unless and until the State fails to provide due process." *Zinermon*, 494 U.S. at 126, 110 S.Ct. at 983. Unlike violations of substantive rights, the existence of post-deprivation remedies are relevant in a procedural due process claim.

The *Zinermon* analysis explained that if adequate remedies for erroneous deprivations exist under the state statutory or tort law *and* if the unconstitutional deprivation was the random and unauthorized act of state officials (not pursuant to state law), then the state has provided all the process that is due. Hence, no actionable violation of procedural due process has occurred. The *Zinermon* analysis is an extension of the *Parratt-Hudson* doctrine to specifically include deprivations of liberty interests. *Parratt v. Taylor*, 451 U.S. 527, 101 S.Ct. 1908 (1981), *overruled in part on other grounds by Daniels v. Williams*, 474 U.S. 327, 106 S.Ct. 662 (1986) and *Hudson v. Palmer*, 468 U.S. 517, 104 S.Ct. 3194 (1984). Prior to *Zinermon*, the *Parratt-Hudson* doctrine applied to deprivations of property, whether

intentional or negligent, and provided that random, unauthorized deprivations did not violate procedural due process if adequate post-deprivation remedies existed under state law. While the *Zinermon* court expanded the *Parratt-Hudson* doctrine to include deprivations of liberty interests, it limited that doctrine somewhat by refusing to apply it when the state vests in one state actor both the power to deprive the plaintiff of his liberty interest and the power to provide pre-deprivation process. This limitation is not relevant in the present case because it was the racing commission, as neutral decision-maker, who possessed the ultimate power to revoke Patin's jockey license, not the stewards.

Patin's claims are that he was denied procedural due process by the stewards in revoking his jockey's license. Therefore, we will discuss the post-deprivation remedies that were available to Patin.

In *Caracci v. Louisiana State Racing Com'n*, 556 So.2d 1249 (La. 1990), the Louisiana Supreme Court specifically discussed the Rules of Racing. In addition to holding that the actions of stewards do not fall under the definition of "adjudication" so as to require application of the Administrative Procedure Act, the supreme court also held that "[p]ersons adversely affected by a decision of the stewards are afforded due process of law through the procedures set forth in La.R.S. 4:154, and the Rules of Racing." *Id.* In discussing the procedural due process afforded a person who is aggrieved by the actions of the stewards, the supreme court in *Caracci*, 556 So.2d at 1250, (footnote omitted) (bold emphasis supplied) explained:

[A]ny person penalized by the actions of the stewards may apply to the Commission for a suspensive appeal. LAC 35:8301. There is no *right*, however, to a suspensive appeal. Thus, the stewards may decide after a hearing, to suspend or revoke a racing license and/or redistribute purse money, and the person accused may or may not be granted a suspensive appeal. Nonetheless, La.R.S. 4:154(F) provides for a very brief time period within which appeals to the Commission must be decided. Thus any action taken by the stewards may be binding for no more than several days. The time frame set forth in 4:154(F) provides the necessary due process in this situation.

Additionally, La.R.S. 4:154 subjects the Racing Commission to the Administrative Procedure Act (La.R.S. 49:950 et seq.), which provides for certain procedural safeguards in the case of an adjudication. . . .

The legislature has expressed an intent and policy of "safeguarding the people of this state against corrupt, incompetent, dishonest and unprincipled horse racing practices." La.R.S. 4:141. The state's interest in maintaining the integrity of the horse racing industry is sufficient justification for the stewards' authority to impose a penalty

without full blown due process being afforded at that stage of the proceedings. **Their action is subject to immediate review and decision by the Commission on appeal with attendant due process protections.**

Louisiana Administrative Code Chapter 35 §8301 still provides for an appeal of the decision of the stewards to the commission as follows:

> Any person penalized or disciplined by the stewards may apply to the commission for a suspensive appeal staying the effects of the stewards' action pending disposition of such appeal by the commission. All appeals must be filed in writing at the office of the commission within five days of the date of the penalty or imposition of the discipline.

The supreme court has declared that the administrative remedies afforded a person aggrieved by actions of the stewards are adequate and satisfy the requirements of due process. Since Patin failed to take advantage of the adequate post-deprivation remedies, he does not yet have an actionable procedural due process claim. In other words, Patin has not been denied due process yet.

Patin has also argued that the Louisiana Racing Commission does not have the statutory power to adjudicate the constitutionality of its own procedures. However, the constitutionality of the statutory procedures themselves are not at issue. Patin has not claimed that the procedures, when applied properly, are unconstitutional. He claims that the

actions of the stewards were unconstitutional because they did not follow the law and this denied him due process. As stated in *Augustine v. Doe*, 740 F.2d 322, 326 (5 Cir. 1984) (*citing* P. Bator, P. Mishkin, D. Shapiro & H. Wechsler, *Hart and Wechshler's The Federal Courts and the Federal System* 236 (Supp. 1981)), "An allegation that a state action has violated an individual's right to procedural due process is thus a condemnation of the procedures that attended the action and not an assessment of the constitutionality of the action itself."

For the above reasons we find that the trial court correctly granted the stewards' exceptions of no cause of action. Costs of this appeal are assessed to Billy Patin.

AFFIRMED.

STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT
P.O. Box 16577
Lake Charles LA 70616
(337) 433-9403

J. Minos Simon
Attorney at Law
P. O. Box 52116
Lafayette LA 70505-2116

NOTICE OF JUDGMENT:

Judgment on Rehearing
rendered May 24, 2000

REHEARING ACTION: May 24, 2000

Docket Number: 99 01739-CA

BILLY PATIN
VERSUS
LARRY MUNSTER ET AL

Appealed from Lafayette Parish Case No. 992581

BEFORE JUDGES:

Hon. Henry L. Yelverton
Hon. Billie Colombaro Woodard
Hon. Glenn B. Gremillion

As counsel of record in the caption case, you are hereby notified that the application for rehearing filed by Billy Patin has this day been

DENIED.

FOR THE COURT

Kenneth J. deBlanc
Clerk of Court

cc:

John William Kolwe, Counsel for the Appellee
Kim Raines Chatelain, Counsel for Appellee

MAY 25 2000

The Supreme Court of the State of Louisiana

BILLY PATIN

VS. NO. 2000-C-1916

LARRY MUNSTER E.J. FAYARD AND C.L. WEBB

- - - - - - - - - - - - -

IN RE: Patin, Billy; - Plaintiff; Applying for Writ of Certiorari and/or Review, Parish of Lafayette, 15th Judicial District Court Div. C, Nos. 99-2581; to the Court of Appeal, Third Circuit, No. 99-1739

- - - - - - - - - - - - -

September 29, 2000

Denied.

PFC
HTL
CDK
BJJ
JPV
CDT
JTK

Supreme Court of Louisiana
September 29, 2000
s/_____
Deputy Clerk of Court
For the Court

OCT 2 2000